

3/1

Notice of Allowability

Application No.

10/825,085

Examiner

Jarreas C. Underwood

Applicant(s)

STERLING ET AL.

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/10/2007.
2. ☒ The allowed claim(s) is/are 1-8, 10-24, 27 and 30-48.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 4/24/2007.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Phillip Nelson on 4/23/2007.

The application has been amended as follows:

1. In claim 1, -- by a scaling factor, the scaling factor; --
is replaced by
-- by a scaling factor, the scaling factor allowing for calculation of a pathlength-independent quantity; --.
2. Claim 49 is cancelled.

Allowable Subject Matter

Claims 1-8, 9-24, 27, 30-48 are allowed.

The following is an examiner's statement of reasons for allowance:

3. As to claim 1, the prior art of record, taken alone or in combination, fails to disclose or render obvious calculating a substance contribution of the absorption data, wherein calculating the substance contribution comprises scaling the reference absorption data by multiplying the reference absorption data by a scaling factor, the scaling factor allowing for calculation of a pathlength-independent quantity.

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4. As to claim 14, the prior art of record, taken alone or in combination, fails to disclose or render obvious a method wherein the reference absorption data is corrected for wavelength-dependant nonlinearities.
5. As to claim 27, the prior art of record, taken alone or in combination, fails to disclose or render obvious a non-analyte contribution from a finite width of the filter.
6. As to claim 30, the prior art of record, taken alone or in combination, fails to disclose or render obvious a non-analyte contribution from the shape of the cuvette.
7. As to claim 33, the prior art of record, taken alone or in combination, fails to disclose or render obvious calculating a ratio of the third quantity divided by the sum of the first quantity, the second quantity, and the third quantity, to achieve a pathlength-independent quantity.
8. As to claims 39 and 43, the prior art of record, taken alone or in combination, fails to disclose or render obvious the use of cuvette distortion matrix elements.
9. As to claim 45, the prior art of record, taken alone or in combination, fails to disclose or render obvious calculating residuals between the exact and calculated optical densities, and determining the analyte concentration error by calculating the analyte concentration consistent with the difference between the residuals at the analyte reference wavelength and the measurement wavelength.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

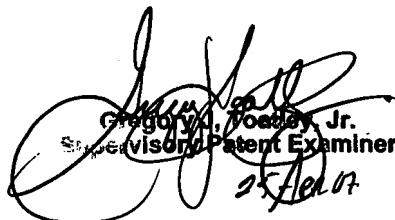
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jarreas C. Underwood whose telephone number is (575) 272-1536. The examiner can normally be reached on Monday-Friday 0530-1400.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jarrears Underwood
Patent Examiner
Art Unit 2877
4/24/2007



Gregory J. Toatley, Jr.
Supervisory Patent Examiner
25 Feb 07